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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,929	07/29/2003	Michel G. Paille		7516
23830	7590	03/23/2007	EXAMINER	
KEVIN L KLUG ATTORNEY AT LAW 11237 CONCORD VILLAGE AVENUE ST. LOUIS, MO 63123-2273			CHIN, RANDALL E	
			ART UNIT	PAPER NUMBER
			1744	
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE		
3 MONTHS	03/23/2007	PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/628,929	PAILLE, MICHEL G.	
	Examiner Randall Chin	Art Unit 1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 13 February 2007.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-3,5,10,13,16 and 17 is/are rejected.
- 7) Claim(s) 4,6-9,11,12,14 and 15 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 27 December 2006 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application
- 6) Other: _____.

DETAILED ACTION

Response to Amendment

1. The Declaration of Mr. Michel G. Paille filed under 37 CFR 1.132 filed 27 December 2006 is insufficient to overcome the rejection of claims 1, 2, 5, 10 and 13 based upon Federico as set forth in the last Office action because any showing of commercial success must be derived from the claimed invention.. In other words, evidence of commercial success must be commensurate in scope with the claims. There must be an established nexus between the claimed invention and evidence of commercial success. The statements that "[B]etween since said December of 2003 date and December of 2004 sales have averaged approximately 60 units per month as defined in the claims of the present application" , "[T]he aforesaid product sales includes all of the elements of claims 1-20" or that "the success is due to the advantages of the aforesaid product" do not establish a nexus between the claimed invention and the commercial success because **there is no specific evidence that the product which has been sold corresponds to the claimed invention, or that whatever commercial success may have occurred is attributable to the product defined specifically by the claims.**

Further, the brief assertion that a long felt need existed within the art is also unpersuasive since there has been **no objective evidence presented that an art recognized problem existed in the art for a long period of time without solution.** The testimonials do not establish that the long felt need was a persistent one that was

recognized by those of ordinary skill and not satisfied by another before invention by Applicant.

Claim Objections

2. Claims 1 and 13 are objected to because of the following informalities:

Claim 1, lines 2-3, the claim language should be clear as to exactly what comprises the "second end". In other words, the claim should be clear that it is the **stem** which has a first end and a second end, and not the mandrel which has the "second end".

Claim 13, line 7, change "toiled" to --toilet--.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 5, 10, 13 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Federico 5,630,243 (hereinafter Federico).

The patent to Federico discloses a device comprising a barrel or housing 5 of a substantially "L" shaped form (Fig. 1A) having a stem with a first end and a base (Fig. 2) in the form of a fixed jaw or "mandrel" 7 with a second end and a bottom side, a hand

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grip 10 substantially near said stem and mounted with said housing, a release trigger or button 2 substantially near said first end of said stem, and a jaw system comprising a moveable jaw or "retainer arm" 8 pivotably mounted substantially opposite said first end and mated with said bottom side and capable of opening with said bottom side sufficiently to fit one or more rolled pieces of toilet paper round said mandrel and between said retainer arm and said bottom side on or near at least a portion of said second end and capable of closing with said bottom side sufficiently to hold said toilet paper (merely involves intended use), and a shaft or linkage 4 connected between said jaw system and said release button whereby opening movement of said release button causes said jaw system to open and create a gap between said bottom side and said retainer arm, thereby allowing a user to install and hold material/wipe(s) (col. 1, lines 60-63).

As for a user utilizing one or more pieces of toilet paper to wipe after toilet use by fitting one or more pieces of toilet paper within the jaw in a "self wiping toiletry device," a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

As for claim 2, said jaw system comprises said retainer arm 8 pivotably mounted at said bottom side of said mandrel 7 (Fig. 4, for example) and capable of mating with said mandrel whereby toilet paper is capable of being held surrounding said mandrel with said retainer arm holding said paper between said retainer arm and said mandrel

(again involves intended use as mentioned above), and at least a portion of said mandrel 7 having a substantially tubular form as can be seen by the substantially bulbous tubular form on mandrel 7 in Fig. 2.

As for claim 5, there is a spring 3 connected with said jaw system and biasing said jaw system closed when said release button is not provided with opening movement, thereby holding said material or toilet paper.

As for claim 10, said housing further comprising a cavity having one or more guides at 6 (Figs. 1A and 2) for positioning said linkage within said cavity, and one or more "pivoting shafts" defined by joggle-hinge 9 for holding said jaw system retainer arm.

As for claim 13, as already stated, the patent to Federico discloses a nearly "L" shaped housing (Fig. 1A) having a stem, a base, a cavity, a shaft or linkage within said cavity, a jaw system mating with said base and capable of holding material/wipe(s), a hand grip on said stem, and said jaw system comprising a retainer arm 8 mated with a bottom side of a mandrel 7 of said base and pivotably mounted relative to said bottom side and capable of allowing said rolled pieces of toilet paper to surround said mandrel and be held between said retainer arm and said bottom side, and said linkage having a first end with a release button and a second end connected with said jaw system retainer arm whereby opening movement of said linkage causes said jaw system retainer arm to open thereby allowing said toilet paper to be placed onto said mandrel of said base and used for wiping after toilet use and allowing said paper to fall from said mandrel after use.

As for a user utilizing one or more pieces of toilet paper to wipe after toilet use by fitting one or more pieces of toilet paper within the jaw in a "self wiping toiletry device," a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

As for claim 16, said retainer arm 8 is pivotably mounted with said bottom side of said housing having a top side contoured to mate with said bottom side of said mandrel of said base, a rear end having a hub (Fig. 3) which pivotably mates with a pivoting shaft at 9 within said cavity, and a spring 3 normally biasing said retainer arm against said base when opening movement is not supplied to said linkage, and at least a portion of said mandrel having a substantially tubular form as can be seen by the substantially bulbous tubular form on mandrel 7 in Fig. 2.

Claim Rejections - 35 USC § 103

5. Claims 3 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Federico in view of Leppart 1,192,330 (hereinafter Leppart).

The patent to Federico discloses all of the recited subject matter as set forth above with the exception of the mandrel having one or more grooves having serrations and said retainer arm having one or more serrations which mate with said mandrel serrations. The patent to Leppart discloses a "mandrel" 7 having one or more grooves having serrations 9 and said "retainer arm" 14 having one or more serrations 9 which

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mate with said mandrel serrations (p. 1, lines 76-93). It would have been obvious to one of ordinary skill in the art to have modified Federico's device such that the mandrel has one or more grooves having serrations and said retainer arm has one or more serrations which mate with said mandrel serrations as taught by Leppart for the purpose of improving the retention of toilet paper within said jaw system.

Allowable Subject Matter

6. Claims 4, 6-9, 11, 12, 14 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims and pending clarification of the claim objections noted above.

Conclusion

7. Applicant's arguments filed 13 February 2007 have been fully considered but they are not persuasive.

At the outset, Applicant's arguments based upon Winther and Thornton are moot since the Examiner has withdrawn these rejections.

In response to Applicant's argument that Federico teaches a toilet cleaning tool and not a self wiping toiletry aid, such argument is unpersuasive and merely involves an intended use, as already stated in the above art rejection. As for a user utilizing one or more pieces of toilet paper to wipe after toilet use by fitting one or more pieces of toilet

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paper within the jaw in a "self wiping toiletry device," a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Clearly, a user is capable of rolling toilet paper or inserting rolled pieces of toilet paper round said mandrel and between said retainer arm and said bottom side on or near at least a portion of said second end and the device is capable of closing with said bottom side sufficiently to hold said toilet paper therebetween.

As for Applicant's argument that a rectangular jaw is impractical to be used for self wiping without incurring serious hygienic and comfort issues or that Federico's device cannot function as a toiletry device are merely speculative attorney's argument unsupported by objective technical evidence on the issue.

Applicant's arguments are generally directed to steps more appropriately drawn to method steps and a user is clearly "capable of" placing toilet paper or rolled sheets, for that matter, between the retainer arm and mandrel. Applicant has presented apparatus or structure claims and has not presented claims drawn to a method of self-wiping using a self-wiping toiletry device. Whether Federico discloses how to roll, wipe, and discard toilet paper in a toiletry wiping aid is patentably irrelevant, and it is noted that these features upon which Applicant relies are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant's arguments based upon obviousness or motivating suggestion are deemed moot in view of the 35 U.S.C. 102 rejection to Federico. Any of Applicant's arguments based upon obviousness with respect to placing toilet paper or rolled sheets around the mandrel are misplaced as the Examiner's position is based upon intended use instead. Nowhere has the Examiner ever stated an obviousness rationale for placing toilet paper or rolled sheets between the retainer arm and mandrel or simply round the mandrel.

Further, Applicant's argument that Federico is "not an analogous art" is patentably irrelevant under the 35 U.S.C. 102 rejection to Federico. Each and every limitation of claims 1, 2, 5, 10, 13 and 16 are deemed met by Federico and anticipated by such.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

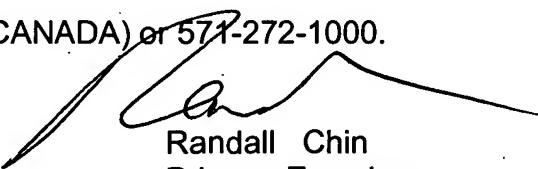
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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randall Chin whose telephone number is (571) 272-1270. The examiner can normally be reached on Monday through Thursday and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on (571) 272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Randall Chin
Primary Examiner
Art Unit 1744



Replacement Sheet

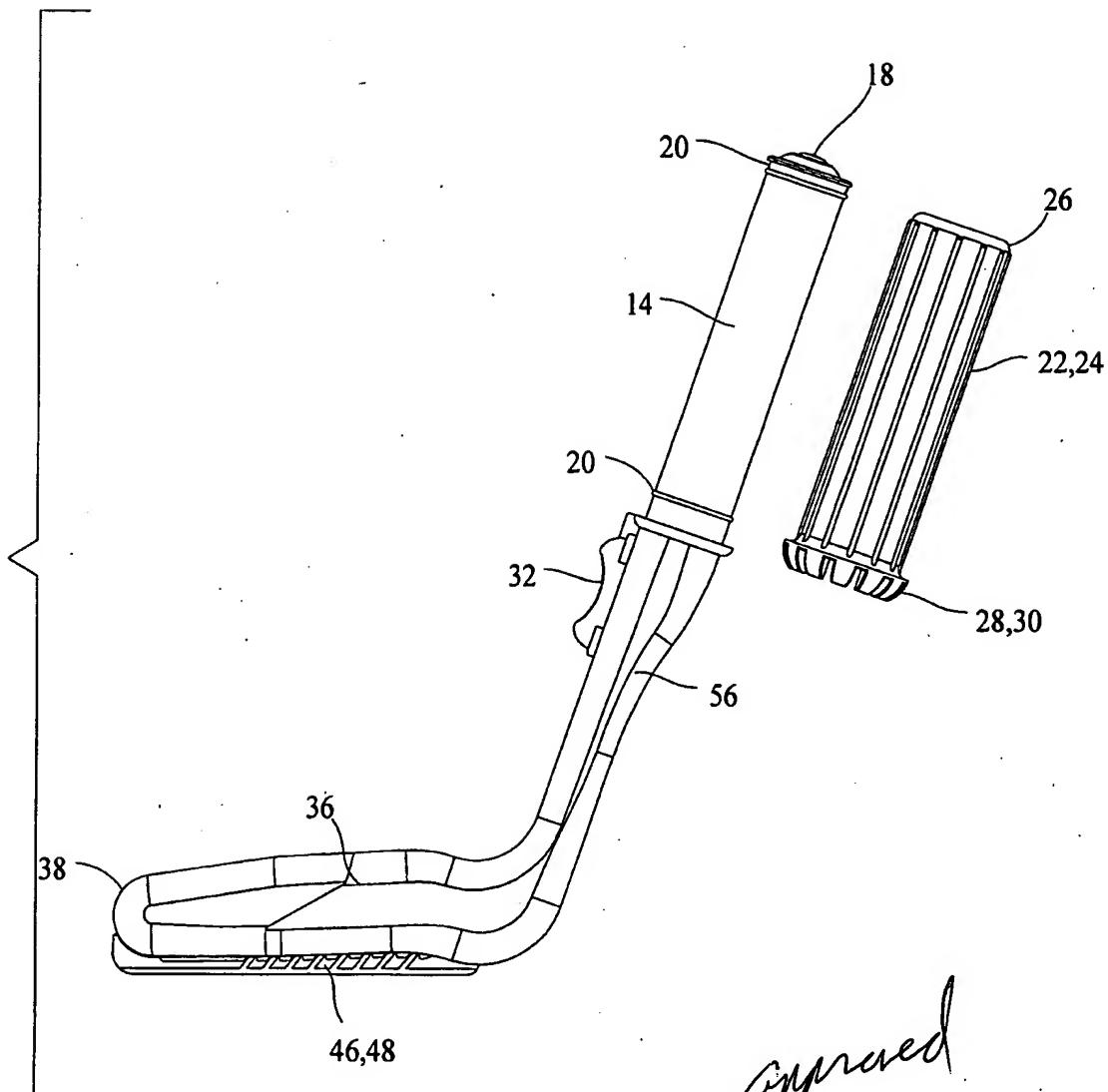
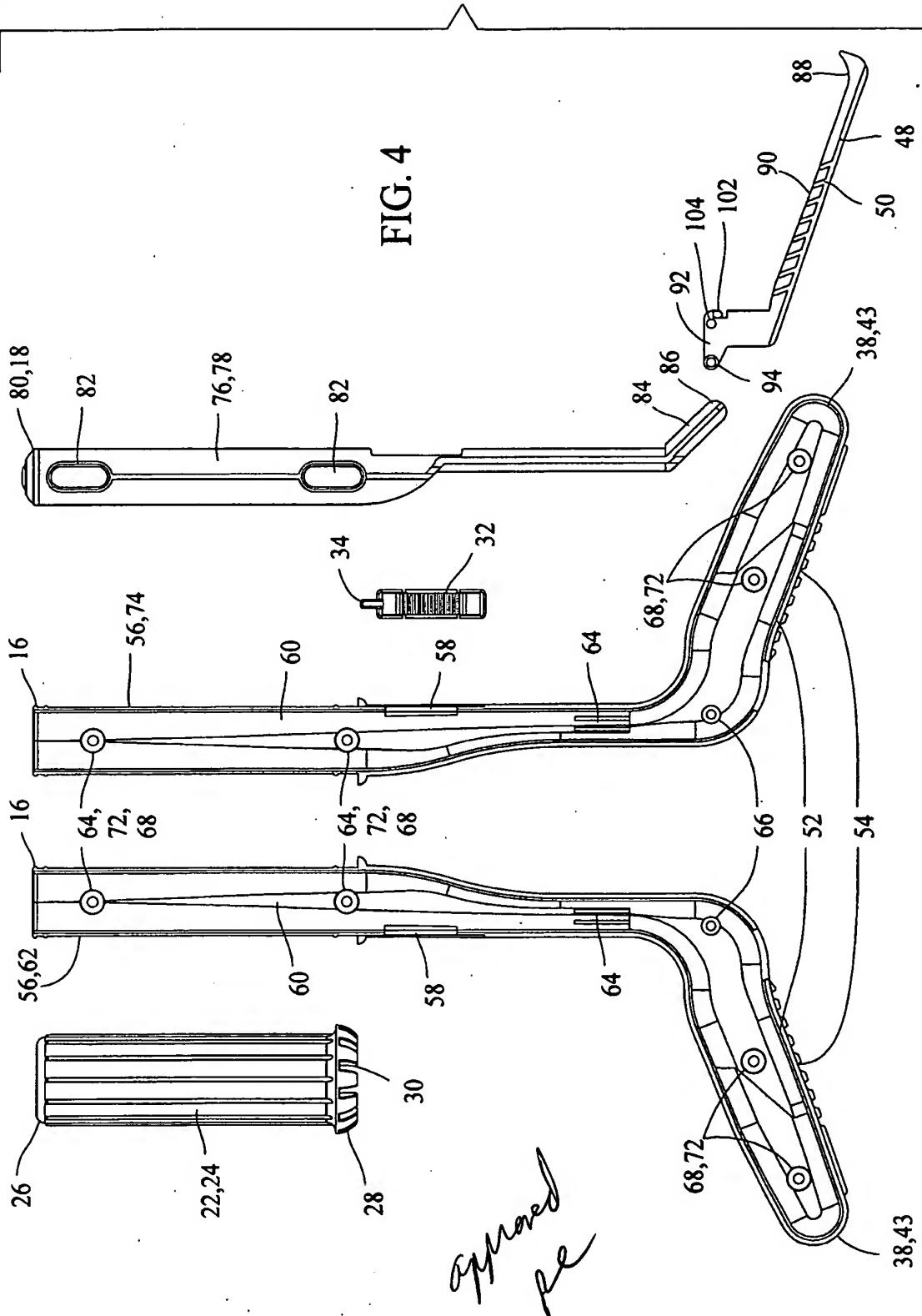


FIG. 3

Replacement Sheet



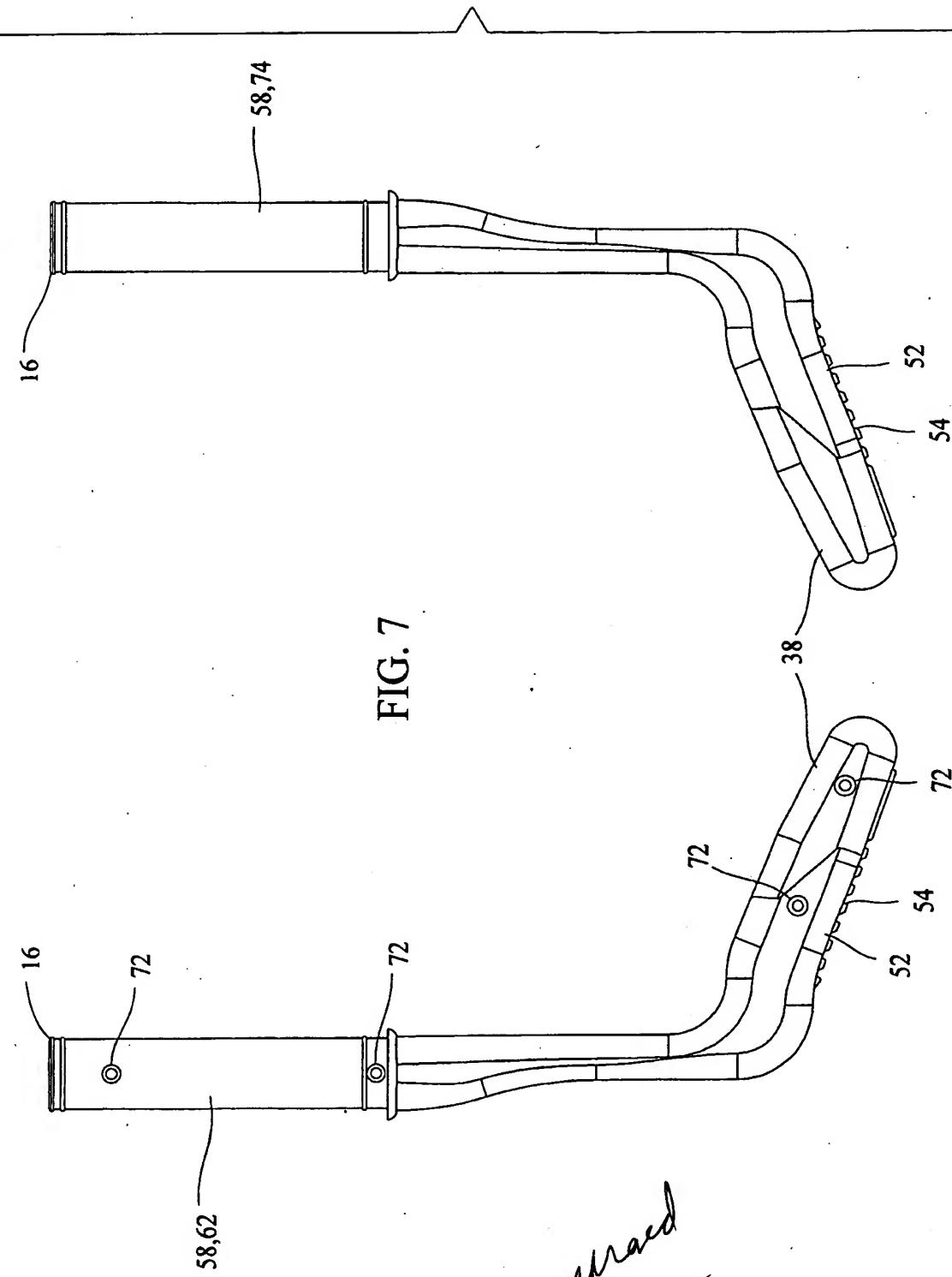
FIG. 4



Replacement Sheet



FIG. 7





Replacement Sheet

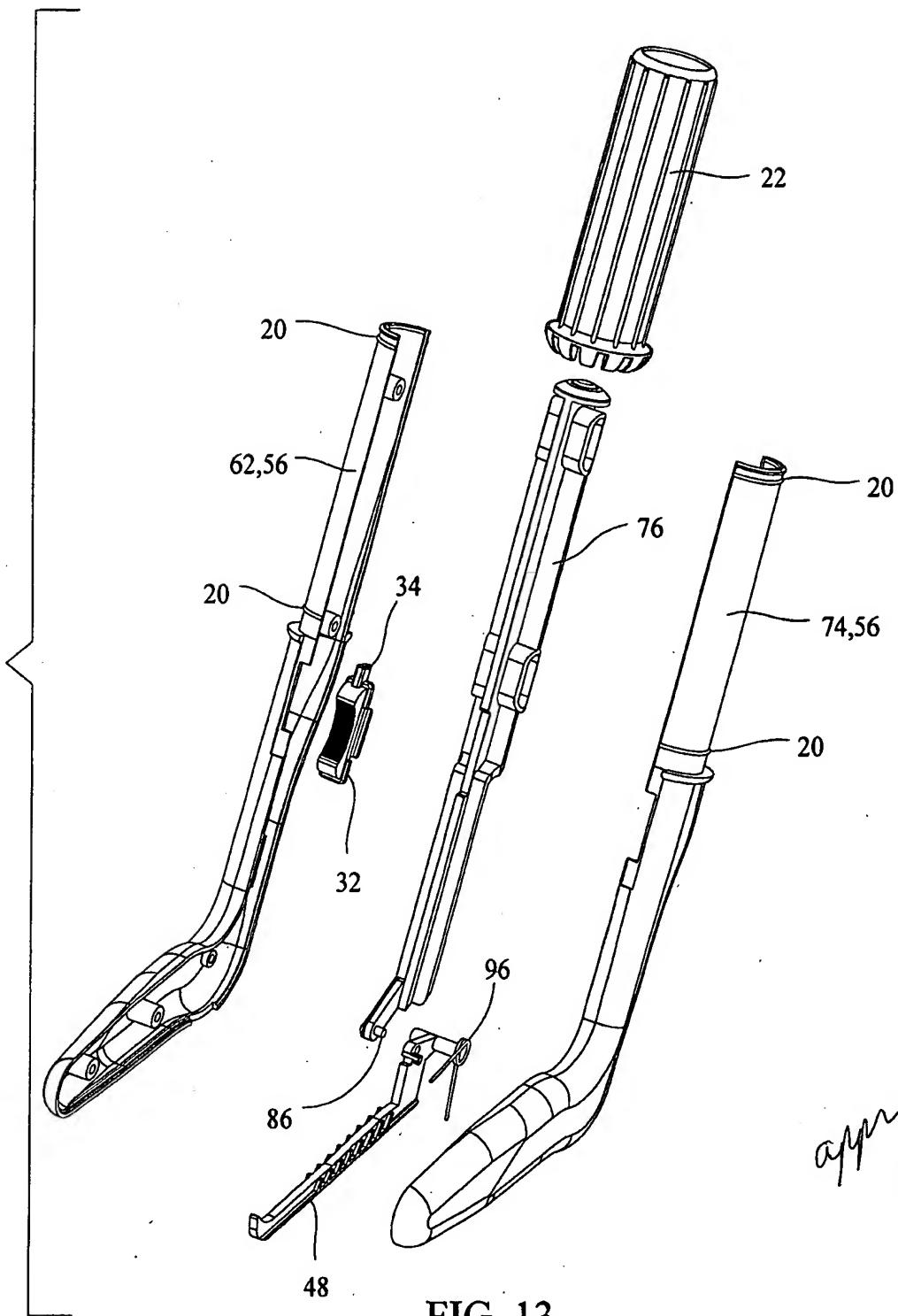


FIG. 13